

Message Text

CONFIDENTIAL

PAGE 01 STATE 207935

61

ORIGIN EB-07

INFO OCT-01 ARA-06 ISO-00 CIAE-00 COME-00 DODE-00 DOTE-00

FMC-01 INR-07 NSAE-00 SAL-01 CG-00 DLOS-06 OES-06 L-03

STR-04 SS-15 NSC-05 SSO-00 NSCE-00 USIE-00 INRE-00

PA-01 PRS-01 SP-02 /066 R

DRAFTED BY EB/TCA/MA:JAPURNELL:EW

APPROVED BY EB/TCA:JWBILLER

FMC: MR. HULL

ARA/CEN:MPLATT

ARA/CEN:MWEISSMAN (SUBS)

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FM SECSTATE WASHDC

TO AMEMBASSY GUATEMALA IMMEDIATE

C O N F I D E N T I A L STATE 207935

E.O. 11652:GDS

TAGS: EW T, GT

SUBJECT: DECREE 41/71: POSSIBLE COUNTERVAILING FEES

1. THE FEDERAL MARITIME COMMISSION (FMC) PLANS TO ISSUE TWO ORDERS BY END OF WEEK OF AUGUST 23-28. ONE WOULD ASK FOR COMMENT ON A PROPOSED RULE, UNDER SECTION 19 OF THE MERCHANT MARINE ACT, 1920, TO IMPOSE COUNTERVAILING FEES ON THE TRANSPORTATION OF FREIGHT BY GUATEMALAN OCEAN CARRIERS AND ASSOCIATED OCEAN CARRIERS FROM THE U.S. TO GUATEMALA. THE SECOND ORDER WOULD SCHEDULE A FULL EVIDENTIARY HEARING ON THE DELTA/FLOMERCA AGREEMENT.

2. THE FMC GENERAL COUNSEL POINTED OUT THAT THE FIRST ORDER MENTIONED PARA 1 DOES NOT IMPOSE A COUNTERVAILING FEE, BUT ONLY REQUESTS AND ALLOWS ALL PARTIES CONCERNED TO

CONFIDENTIAL

CONFIDENTIAL

PAGE 02 STATE 207935

PRESENT THEIR VIEWS TO THE FMC ON THE NECESSITY FOR SUCH

FEEES. COMMENTS WILL BE ACCEPTED FOR 45 DAYS, AFTER WHICH THE FMC WILL DECIDE WHETHER OR NOT TO IMPOSE COUNTERVAILING FEES. NEVERTHELESS, BECAUSE OF THE CONSIDERABLE LIKELIHOOD THAT THE FMC WOULD FIND THAT CONDITIONS UNFAVORABLE TO THE FOREIGN TRADE OF THE UNITED STATES EXIST, THE FMC HAS AGREED TO DELAY PUBLICATION OF THE REQUEST FOR COMMENT ON THE PROPOSED RULE-MAKING FOR A FEW DAYS, GIVING THE DEPARTMENT AN OPPORTUNITY TO SEEK A DIPLOMATIC SOLUTION BEFORE THE FMC PUBLICLY SOLICITS COMMENTS ON WHETHER SECTION 19 SHOULD BE INVOKED, OR TO REQUEST, ON GROUNDS OF POSSIBLE GRAVE DAMAGE TO OUR FOREIGN RELATIONS, THAT THE FMC NOT PROCEED. THE FMC EMPHASIZES THAT IT DOES NOT SEEK REPEAL OF DECREE 41/71, BUT SOLELY THAT THE DECREE NOT BE ENFORCED IN GUATEMALA'S TRADE WITH THE UNITED STATES.

3. ACTION REQUESTED: INFORM THE GOG THAT UNLESS THE FMC RECEIVES PROMPT, CONCRETE ASSURANCE THAT DECREE 41/71 WILL NOT BE ENFORCED IN THE FOREIGN TRADE OF THE U.S., NOT LATER THAN AUGUST 27, THE FMC WILL PUBLISH A REQUEST FOR COMMENT ON COUNTERVAILING FEES. YOU SHOULD MENTION THAT IF THE GOG DOES NOT WISH TO AVAIL ITSELF OF THIS FINAL OPPORTUNITY TO AVOID INITIATION OF SECTION 19 ACTION BY PROVIDING THE NECESSARY ASSURANCES RE NON-ENFORCEMENT OF DECREE 41/71 IN THE U.S. FOREIGN TRADE, GOG AND FLOMERCA WILL HAVE THE RIGHT, DURING THE 45-DAY COMMENT PERIOD, TO SUBMIT THEIR VIEWS TO THE FMC SHOWING WHY THEY BELIEVE SECTION 19 ACTION IS NOT JUSTIFIED.

4. ACTION REQUESTED: EMBASSY REQUESTED TO DETERMINE IF WAIVERS ARE BEING GRANTED TO 41/71. OUR UNDERSTANDING IS THAT FLOMERCA IS WILLING TO GRANT WAIVERS TO DELTA, BUT THAT OTHER GUATEMALAN-FLAG LINES BLOCK THEM. WE DO NOT KNOW IF OTHER FOREIGN-FLAG LINES, BOTH THOSE WHO HAVE SIGNED ASSOCIATION AGREEMENTS WITH FLOMERCA, AND THOSE WHICH HAVE NOT, ARE RECEIVING WAIVERS. REQUEST CLARIFICATION ON THESE POINTS.

5. ACTION REQUESTED: WE UNDERSTAND THAT THERE IS NO LEGAL REQUIREMENT THAT THE GOG REVIEW AND APPROVE CONFIDENTIAL

CONFIDENTIAL

PAGE 03 STATE 207935

ASSOCIATION AGREEMENTS ENTERED INTO BY FLOMERCA. WE ALSO UNDERSTAND THAT THERE IS NO SPECIFIC PROCEDURE ESTABLISHED IN LAW BY WHICH EITHER THE CONGRESS OR THE EXECUTIVE BRANCH OF THE GOG COULD EXPRESS APPROVAL OF SUCH AGREEMENTS. DESPITE FOREGOING, WE UNDERSTAND THAT THE DELTA/FLOMERCA AGREEMENT IS SO POLITICALLY CONTROVERSIAL THAT SOME TYPE OF AD HOC APPROVAL, SUCH AS A RESOLUTION OF THE GUATEMALAN CONGRESS, CONCURRED

IN BY THE PRESIDENT, WOULD BE REQUIRED BEFORE THE
AGREEMENT COULD ENTER INTO EFFECT IN GUATEMALA.
DEPARTMENT AND FMC WOULD APPRECIATE EMBASSY'S CONFIRMA-
TION OR CORRECTION OF ABOVE UNDERSTANDING. HABIB

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